



DAC  
JW

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: MAGAL, Yosef                      Examiner: CAMPBELL, Thor S.  
Serial No.: 10/512,042                      Group Art Unit: 3742  
Filed: October 21, 2004                      Attorney Docket No.: P-5247  
Title: IMPROVEMENTS IN THERMOSTAT FOR WATER BOILER

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R.**

**\$1.181**

This petition is filed in response to the Notice of Abandonment dated September 21, 2006 issued by the United States and Trademark Office in connection with the above-identified Application. A copy of the Notice is attached hereto as **Exhibit A**.


The Notice is incorrect and was issued in error. On September 7, 2006, Applicants filed a Response to an Office Action dated March 8, 2006 with the United States Patent and Trademark Office, including a Petition for a Three-Month Extension of Time. Applicants attach hereto, as **Exhibit B**, a copy of the Response to the Office Action dated March 8, 2006 as filed on September 7, 2006 with the United States Patent and Trademark Office. A copy of the postcard receipt stamped by the United States Patent and Trademark Office, evidencing receipt of the Response by the Patent Office on September 7, 2006, is attached hereto as **Exhibit C**.

Based on the above, the Response to the March 8, 2006 Office Action for the subject Application was timely filed with the United States Patent and Trademark Office. Accordingly, Applicants respectfully request that the United States Patent and Trademark

APPLICANTS: MAGAL, Yosef  
SERIAL NO.: 10/512,042  
FILED: October 21, 2004  
Page 2

Office withdraw the Notice of Abandonment and allow the continued prosecution of the referenced patent application.

No fee is believed to be due, as this petition resulted from an error by the USPTO. However, if any fee is required, the undersigned attorney hereby authorizes the Patent Office to charge such additional fee to Deposit Account 50-3355.

  
Respectfully submitted,

Mark S. Cohen  
Attorney for Applicant(s)  
Registration No. 42,425

Dated: 17 October 2006

**Pearl Cohen Zedek Latzer, LLP**  
1500 Broadway, 12th Floor  
New York, New York 10036  
Tel: (646) 878-0800  
Fax: (646) 878-0801

# **EXHIBIT A**



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/512,042	10/21/2004	Yosef Magal	P-5247-US	2233

49443 7590 09/21/2006  
PEARL COHEN ZEDEK, LLP  
1500 BROADWAY 12TH FLOOR  
NEW YORK, NY 10036

EXAMINER

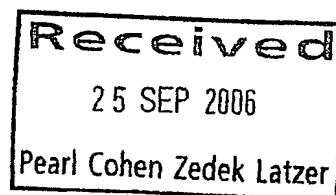
CAMPBELL, THOR S

ART UNIT	PAPER NUMBER
----------	--------------

3742

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.





### Notice of Abandonment

Application No.

10/512,042

Examiner

Thor S. Campbell

Applicant(s)

MAGAL, YOSEF

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 03/08/06.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

THOR S. CAMPBELL  
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

# **EXHIBIT B**



Applicant(s): MAGAL, Yosef  
Serial No. /Patent No.: 10/512,042

PCZL Docket No.: P-5247-US  
Hand Delivered on: September 7, 2006

Title: IMPROVEMENTS IN THERMOSTAT FOR WATER BOILER

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Provisional Cover Sheet  | 9. <input type="checkbox"/> Response to Notice to File Missing Parts  |
| 2. <input type="checkbox"/> Utility Patent Application Transmittal   | 10. <input type="checkbox"/> Response to Notice of Incomplete Reply   |
| 3. <input type="checkbox"/> RCE Transmittal Sheet  | 11. <input type="checkbox"/> Request for Correction of Filing Receipt   |
| 4. <input type="checkbox"/> Fee Transmittal Sheet  | 12. <input type="checkbox"/> Information Disclosure Statement including:<br>- Form PTO/SB/08 and references ____                      |
| 5. <input type="checkbox"/> Patent Application Under 35 USC 111(a)   | 13. <input type="checkbox"/> Preliminary Amendment  |
| <input type="checkbox"/> Provisional Patent Application Under 35 USC 111(b)  | 14. <input checked="" type="checkbox"/> Response to Office Action<br>dated <u>March 8, 2006</u>                                       |
| <input type="checkbox"/> Transmittal Sheet for Entering National Phase<br>Containing:<br>____ Pages of Specification<br>____ Pages of Claims<br>____ Page of Abstract<br>____ Pages of Formal Drawings<br>____ Pages of ____ | 15. <input checked="" type="checkbox"/> Petition for a Three Month(s) Extension of<br>Time  |
| 6. <input type="checkbox"/> Signed Declaration & Power of Attorney   | 16. <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Appeal Brief ____  |
| 7. <input type="checkbox"/> Request for Correction of Recordation of Assign. and:<br>- Recordation Cover Sheet<br>- Copy of Notice of Recordation of Assign.   | 17. <input type="checkbox"/> Issue Fee Transmittal <input type="checkbox"/> Publication Fee   |
| 8. <input type="checkbox"/> Recordation of Assign. Cover Sheet & Signed Assign.  | 18. <input type="checkbox"/> Submission of Formal Drawings: Two sets of<br>____ Sheets containing Figs. ____                          |
|  | 19. <input type="checkbox"/> Certified Copy of Priority Doc.  |
|  | 20. <input type="checkbox"/> Claim for Convention Priority  |
|  | 21. <input type="checkbox"/> Revocation and Power of Attorney, including:<br>- Statement Under 37 CFR 3.73(b)<br>- Copy of Assignment |
|  | 22. <input type="checkbox"/> Other: ____  |

PTO/SB/22 (12-04)  
Approved for use through 07/31/2006. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.





Attorney Docket No.: P-5247-US

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): MAGAL, Yosef                      Examiner:              CAMPBELL, Thor R  
Serial No.:      10/512,042                      Group Art Unit:      3742  
Filed:              October 21, 2004  
Title:              IMPROVEMENTS IN THERMOSTAT FOR WATER BOILER

---

**AMENDMENT**

Mail Stop Amendment  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Amendment is filed in response to the Office Action dated March 8, 2006 issued by the United States Patent and Trademark Office in connection with the above-identified Application. A response to the March 8, 2006 Office Action was due June 8, 2006. Applicant is concurrently filing a Petition for a 3-Month Extension of Time, including the required fee. Therefore, a response is due September 8, 2006. Accordingly, this Amendment is being timely filed.

Kindly amend the above-identified application as follows:

**Amendments to the Claims** are reflected in the listing of claims which begins on page 2 of this paper.

**Remarks/Arguments** begin on page 4 of this paper.



APPLICANT(S): MAGAL, Yosef  
SERIAL NO.: 10/512,042  
FILED: October 21, 2004  
Page 2

### AMENDMENTS TO THE CLAIMS

Please add or amend the claims to read as follows, and cancel without prejudice or disclaimer to resubmission in a divisional or continuation application claims indicated as cancelled:

1. (Currently amended) An improved thermostat and heat limitation arrangement for control of power to an electric hot water boiler, ~~comprising~~ comprising:

a tubular structure supporting a first and a second electric switch arranged to be interposed in series between a power supply and an electric heating element,

an extended length first bimetal device being arranged for thermal at least indirect contact with water being heated and being supported by said structure, said extended length bimetal device comprising of a first pair of components made of materials being greatly different in the coefficient of linear thermal expansion, at least one of said components being tubular and the remaining component projecting into said structure to open said first switch when said first bimetal device reaches a first desired temperature,

~~the improvement comprising the addition~~ inside said first bimetal device ~~[[of]]~~ a second bimetal device comprising of a second pair of components made of materials being moderately different in their coefficient of linear thermal expansion, one of said second components also projecting into said structure to open said second switch if said second bimetal device reaches a second temperature higher than said first desired temperature due to failure of said first bimetal device to open said first electric switch,

wherein said thermostat is insertable into said water in said boiler for directly immersing into said water or for insertion in a tube immersed in said water.

2. (Previously presented) The thermostat as claimed in claim 1, wherein said second switch when opened remains in the open state until a reset control is manually operated.

3. (Previously presented) The thermostat as claimed in claim 1, wherein said extended length first bimetal device is composed of a brass outer tube and an invar central rod.

APPLICANT(S): MAGAL, Yosef  
SERIAL NO.: 10/512,042  
FILED: October 21, 2004  
Page 3

4. (Previously presented) The thermostat as claimed in claim 1, wherein said second bimetal device comprises a first of said materials being a stainless steel and a second of said materials being invar steel.

APPLICANT(S): MAGAL, Yosef  
SERIAL NO.: 10/512,042  
FILED: October 21, 2004  
Page 4

### REMARKS

The present response is intended to be fully responsive to all points of objection and/or rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application is respectfully requested.

Applicant asserts that the present invention is new, non-obvious and useful. Prompt consideration and allowance of the claims is respectfully requested.

### Status of Claims

Claims 1-4 are pending in the application. Claims 1-4 have been rejected. Claim 1 has been amended.

Applicant respectfully asserts that the amendments to claim 1 add no new matter. Support for the amendment of claim 1 may be found, inter alia, in page 6, lines 23 - 27 of the description and in Figs. 2 and 5, referring to part 14 "first bimetal device" and the parts contained in it, such as 16, 22, 24, 30 and 32.

### CLAIM REJECTIONS

#### 35 U.S.C. § 102 Rejections

In the Office Action, the Examiner rejected claims 1-4 under 35 U.S.C. § 102(b), as being anticipated by Phillips et al. (US 4,539,468; the '468 patent). Applicant respectfully traverses this rejection in view of the remarks that follow.

The '468 patent discloses an arrangement of primary bimetal 31 and secondary bimetal 32 which are disposed outside of the water vessel, as may clearly be seen in Fig. 2, where the element head 53 is the part of the device of the '468 patent that may be used to indicate the border line between the "wet side" of the device (from element head 53 towards electric heating element 54) and the "dry side" (from element head 53 to the opposite direction). The '468 patent does not teach or suggest, and the Examiner does not suggest that

APPLICANT(S): MAGAL, Yosef  
SERIAL NO.: 10/512,042  
FILED: October 21, 2004  
Page 5

the '468 patent teach or suggest "wherein said thermostat is insertable into said water in said boiler for directly immersing in said water or for insertion into a tube immersed in said water", as recited in amended independent claim 1. As is clearly evident from the '468 patent, inter alia from Figs. 1 and 2 and the corresponding description, not only the two pairs of bimetal (31, 32) may not be immersed in the water of the vessel, it would have not been practical to change the construction of the vessel of the '468 patent so as to allow for inserting these parts in the water, either directly immersed in the water or indirectly inserted in a tube. For a reference to anticipate a claim, the reference must teach all elements of the claim. Therefore, the '468 patent cannot anticipate claim 1.

Accordingly, Applicant respectfully asserts that amended independent claim 1 is allowable. Claims 2-4 depend from, directly or indirectly, claim 1, and therefore include all the limitations of this claim. Therefore, Applicant respectfully asserts that claims 2-4 are likewise allowable. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejections to amended independent claim 1 and to claims 2-4 dependent thereon.

### **35 U.S.C. § 103 Rejections**

In the Office Action, the Examiner rejected claims 3-4 under 35 U.S.C. § 103(a), as being unpatentable over the '468 patent.

Applicant respectfully traverse the rejection of claims 3-4 under 35 U.S.C. § 103(a) in view of the '468 patent because a prima facie case of obviousness has not been established.

An obviousness rejection requires a teaching or a suggestion by the relied upon prior art of all the elements of a claim (M.P.E.P. §2142). Since the '468 patent does not teach or suggest all the elements of independent claim 1, as amended, and since rejected dependent claims 3 and 4 include all the elements of claim 1, the Examiner fails to establish a prima facie showing that the '468 patent teaches or suggests every feature of claims 3-4. Accordingly, applicant respectfully request that the rejection of claims 3-4 under 35 U.S.C. § 103(a) be withdrawn.

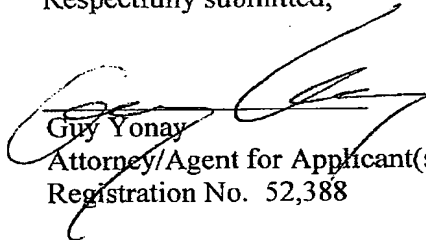
APPLICANT(S): MAGAL, Yosef  
SERIAL NO.: 10/512,042  
FILED: October 21, 2004  
Page 6

In view of the foregoing amendments and remarks, the pending claims are deemed to be allowable. Their favorable reconsideration and allowance is respectfully requested.

Should the Examiner have any question or comment as to the form, content or entry of this Amendment, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

Please charge any fees associated with this paper to deposit account No. 50-3355.

Respectfully submitted,

  
Guy Yonay  
Attorney/Agent for Applicant(s)  
Registration No. 52,388

Dated: September 6, 2006

**Pearl Cohen Zedek Latzer, LLP**  
1500 Broadway, 12th Floor  
New York, New York 10036  
Tel: (646) 878-0800  
Fax: (646) 878-0801

# EXHIBIT C

Applicant(s): MAGAL, Yosef  
Serial No. /Patent No.: 10/512,042

PCZL Docket No: P-5147-US  
Hand Delivered on: 7 September 2006

Title: IMPROVEMENTS IN THERMOSTAT FOR WATER BOILER

- 1. ☐ Provisional Cover Sheet
- 2. ☐ Utility Patent Application Transmittal
- 3. ☐ RCE Transmittal Sheet
- 4. ☐ Transmittal Sheet for Entering National Phase
- 5. ☐ Fee Transmittal Sheet
- 6. ☐ Patent Application Under 37 CFR 1.53 (b)
- ☐ Provisional Patent Application Under 37 CFR 1.53 (c)

Containing:

— pages of Specification  
— pages of Claims  
— page of Abstract  
— pages of Informal Drawings  
— page of

- 7. ☐ Signed Declaration & Power of Attorney
- 8. ☐ Recordation of Assignment Cover Sheet  
Assignment
- 9. ☐ Request for Correction of Recordation of Assign. and:  
-Recordation Cover Sheet  
-Copy of Notice of Recordation of Assignment

- 10. ☐ Response to Notice to File Missing Parts
- 11. ☐ Response to Notice of Incomplete Reply
- 12. ☐ Request for Correction of Filing Receipt
- 13. ☐ Information Disclosure Statement including:  
- Form PTO/SB/08 and references
- 14. ☐ Preliminary Amendment
- 15. ☒ Response to Office Action dated March 8, 2006
- 16. ☒ Petition for a Three Month(s) Extension of Time
- 17. ☐ Notice of Appeal ☐ Appeal Brief
- 18. ☐ Issue Fee Transmittal Sheet ☐ Publication fee
- 19. ☐ Submission of Formal Drawings
- 20. ☐ Certified Copy of Priority Document
- 21. ☐ Claim for Priority under 35 U.S.C. Section 119
- 22. ☐ Revocation and Power of Attorney, including:  
- Statement Under 37 CFR 3.73(b)  
- Copy of Assignment
- 23. ☐ Other:

LSA# 1251

